

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Digital Audio Broadcasting Systems)	
And Their Impact on the Terrestrial)	MM Docket No. 99-325
Radio Broadcast Service)	

To: The Commission

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS**

The Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of

Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “Associations”), by their attorneys and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415, 1.419, hereby jointly submit their comments in response to the Commission’s Further Notice of Proposed Rulemaking and Notice of Inquiry¹ in the above captioned proceeding.

¹ Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service Further Notice of Proposed Rulemaking and Notice of Inquiry, MM Docket No. 99-325 (April 15, 2004). (“Digital Audio FNPRM”)

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I. SUMMARY

The Associations submit these comments with one goal – to encourage the Commission to avoid unnecessary regulation and promote innovation in digital audio broadcasting (“DAB”). DAB is a technology with great potential; it has the capability to dramatically improve radio broadcast technology and market diversity. iBiquity’s in-band on-channel (“IBOC”) technology can transmit near CD quality sound, data information, and improve radio reception in an over-the-air signal. Further, the system uses spectrum more efficiently and creates opportunities to multicast radio stations using no additional spectrum outlay. Such a technology could expand the diversity of the current broadcast market and create the additional airspace needed for local programming.

Despite these capabilities, pervasive regulation of the nascent DAB industry threatens to prevent widespread and efficient deployment the technology. Artificial digital transition deadlines, ill-conceived high definition standards, multicast bans, and outdated analog regulations may bring the implementation of digital audio broadcasting to a virtual standstill. Instead of such heavy-handed regulation, the market should determine the viability of the DAB technology. By enabling market innovation, broadcasters can expediently deploy DAB without threatening analog quality of service in the interim, and thus serve the public interest.

II. INTRODUCTION

The Associations appreciate the opportunity to provide their views on the issues surrounding the transition from analog radio to digital audio broadcasting. Each of the Associations is chartered to help create and maintain a regulatory and economic environment conducive to the growth of free, over-the-air, locally based, full service radio and television broadcast industries in their respective states. As such, the Associations have a direct interest in this matter since their collective memberships include hundreds of entities providing literally thousands of channels of local radio broadcast service to their communities. Those efforts will be greatly impacted for the better by this new technology.

The In-Band On-Channel (“IBOC”) digital audio broadcasting standard has already achieved some notable successes. It provided the means for a seamless transition from analog to digital services without additional spectrum outlay by the Commission. iBiquity, the developer of the chosen IBOC system, has provided a successful system design which permits radio stations to simultaneously broadcast both a digital and analog signal. As a result, analog listeners will continue to have service in the interim period before the anticipated market-driven conversion to all-digital service takes place. Finally, listeners will benefit from the technical superiority of the IBOC standard over that of traditional analog services. The IBOC standard provides enhanced audio quality, new data services and potentially a plethora of new radio stations made possible by multicasting technologies.

While there is great promise in the IBOC technology, the Associations maintain that this promise can only be realized in a deregulatory environment. The Associations urge the Commission to foster the development of a free and open market place by regulating only where it is absolutely necessary. As the successes of wireless industry have illustrated, a new

technology can best develop and flourish under minimal regulation. In order to speed the deployment of DAB technologies, yet still practice regulatory restraint, the Associations make the following recommendations:

1. The Commission should allow market forces to govern the adoption of digital audio broadcasting by the radio industry. No station should be required to adopt IBOC or other digital technology.
2. The Commission should not impose additional DAB quality standards, such as high definition digital audio broadcasting. Such artificial standards could meaningfully delay the transition period. The market can best determine the viability and demand for higher quality audio.
3. The Commission should permit licensees to provide more than one digital bitstream (“multicasting”) within the constraints of the IBOC technical standards. This would enhance program diversity. The Commission should be flexible in its regulation of multicasting, at least in its early stages of development.
4. The Commission should permit licensees to broker multicast bitstreams to unaffiliated entities and to other broadcasters. This will allow licensees to recoup some of the costs associated with the digital conversion, and to increase outlet diversity.
5. Extending interim authorization for IBOC AM nighttime broadcasts and streamlining the dual antenna application process will facilitate a more expedient transition to digital audio, and thus serve the public interest.

III. DISCUSSION

A. The Commission should minimally regulate the transition from analog to digital forms of radio

The Associations agree that there is “no immediate need to consider mandatory transition policies of the type contemplated with respect to DTV.”² The Associations discuss later in this comment substantive rule changes which will “likely encourage radio stations to convert to a

² See Digital Audio FNPRM at ¶ 16; *See also* 47 U.S.C. § 309(j)(14)(B)(codifying Congress’ December 13, 2006 analog television termination date.)

hybrid or all-digital format,”³ such as the authorization for AM nighttime IBOC broadcasts and streamlining the dual antenna administrative procedures. However, the changes that the Associations do recommend are largely deregulatory. Pervasive market regulation to stimulate IBOC broadcasting should be avoided at this time.

The marketplace can and will best determine the speed of the conversion. It is still premature to interfere with market forces in an attempt to foster the implementation of DAB. The Associations do support the Commission’s suggestion that periodic reviews “in terms of receivers on the market and number of DAB stations on-the-air” be undertaken.⁴ This should occur no more frequently than annually. The Commission can and should facilitate the collection of data needed for monitoring the transition from analog to digital, but it should not undertake pervasive industry regulation unless and until it is clear the marketplace has indeed faltered.

B. The Commission should not permit rule changes which increase regulation of the nascent DAB marketplace

1. Rule changes and amendments

a. High Definition Digital Audio Broadcasting (¶ 19)

A high definition digital audio broadcasting (“HD-DAB”) standard should not be mandated at this time. If the Commission concludes to the contrary, any HD-DAB standard should be based upon the iBiquity IBOC system, so that no additional outlay for equipment and licensing fees would be forced upon current and prospective digital broadcasters. If the iBiquity standard is not used, broadcasters seeking to deploy DAB technology would be constrained by cost and inter-operability concerns associated with the provision of any higher-quality, and

³ *Id.*

⁴ Digital Audio FNPRM at ¶ 17.

correlatively, higher-bandwidth signal. Any heightened obligation on broadcasters, who are confronted with an ever-increasingly fragmented listening audience, may be detrimental to the deployment of these new and costly technologies. The Commission should defer further inquiry into setting quality standards for IBOC until there is greater penetration of the technology.

b. Digital Audio Multicasting (¶20)

The Associations are supportive of the efforts of National Public Radio's "Tomorrow Project"⁵ in testing digital audio multicasting. Multicasting is beneficial because it may provide listeners with additional programming choices and radio stations with additional sources of revenue. Multicasting could accomplish these goals by either using excess broadcast capacity for new program or data streams or brokering the additional capacity to others. As the Commission stated in its Digital Audio FNPRM, such additional revenue can be invested into new programming, and thereby benefit the public interest.⁶

The Associations agree that "adopting DAB service rules that encourage more audio streams would promote program diversity. . . ."⁷ The permanent DAB rules should permit licensees to allow unrelated entities to program unused or excess audio streams or airtime. Such a brokering system would promote program diversity and ease entry for minority programmers with minimal disruption to the Commission's existing rules and no detriment to the public interest. The following five points address the Commission's specific public interest concerns raised in ¶ 21 of the Digital Audio FNPRM.

⁵ National Public Radio, Final Report, MM Docket No. 99-325 (March 10, 2004).

⁶ Digital Audio FNPRM at ¶ 21.

⁷ *Id.*

(1) *Diversity Goals*

Permitting licensees to use multicasting capability to broadcast additional channels of audio or to broker excess spectrum capacity would further the Commission's diversity goals, mainly program and outlet diversity.

Program diversity will be enhanced, because there will be an opportunity for additional programming to be provided to the public. It appears that it is possible, using today's DAB equipment, to provide two program streams within the 96 kbps bitstream used for IBOC transmissions. Both streams would be over FM stations without adversely affecting the primary analog signal. One 64 kbps bitstream will provide "CD quality programming." The other 34 kbps bitstream will permit a program service of lower quality, perhaps equivalent to current "FM quality," but certainly superior to the audio quality provided by AM stations. While broadcasters should have the right to decide whether to implement multicasting, based upon market demand and other factors, this technology does offer the potential to double the number of potential channels being offered to the public. This will permit individual channels to be aimed at much narrower demographic segments ("narrowcasting") than is typical today.

With multicasting as an option, many broadcasters will choose to present programming aimed at listeners whose interests are not being met by existing program services, which by their very nature must be aimed at fairly broad listener segments. They may focus on services such as early jazz, "roots" music, news, talk or other services, which do not demand the highest audio quality for their secondary channel. Such channels are ideal for attempts to reach niche audiences not normally sought by mainstream stations. If multicasting is not permitted, broadcasters and listeners will have fewer alternatives. Where a licensee has more programming vehicles, it may focus on much narrower audience segments. Today, licensees must target the

median listener; minority or other niche tastes are largely ignored.⁸ This will not be the case in a multicasting environment. That expansion of program channels leads to expanded program diversity is amply proven by the history of the cable television industry, in which dozens of niche programming services prosper in a multi-channel environment.

Outlet diversity can be advanced, as well. Brokering of individual program channels provides a means to circumvent some financial impediments to becoming a broadcaster, and there is a potential for new market entrants to take advantage of such arrangements. The financial burden of obtaining a broadcast license as well as building a broadcast station will not be present for subsidiary broadcasters. While rents will ultimately reflect these sunk costs, they can be spread over the life of an agreement or longer, rather than incurred “up front” as in a typical acquisition of a broadcast property. As a result, there is a possibility that new entrants who may not have had an opportunity to broadcast, could obtain excess capacity and contribute to the airwaves in the public interest.

(2) *Section 310(d) Transfers of Control*

Brokering of a program channel would not constitute a transfer of control under the Communications Act. This is consistent with longstanding Commission treatment of time brokerage arrangements. In such cases, the station licensee remains primarily responsible for compliance with regulatory requirements, which it enforces through contractual provisions governing the actions of the time broker.

Should the Commission conclude that Commission consent is required prior to the brokerage of a subsidiary digital audio channel, it should develop an expedited approval procedure along the lines of the *pro forma* transfers of control now processed on FCC Form 316.

⁸ Note that the increase in diversity will be more evident in sparsely populated markets.

No public notice period should be imposed. The Commission should not use any form of transfer process to unduly delay a transaction or to impose substantive programming requirements on licensees or channel brokers.

Also, in the event the Commission requires and grants its approval to such a brokerage arrangement, the primary station licensee should be relieved of primary responsibility for the actions of the broker. By giving its approval to such an arrangement, the Commission has effectively found that it has direct jurisdiction over the actions of the broker, and it should look directly to the broker for compliance with its rules, regulations and procedures.

Finally, the Commission should not impose a maximum for the amount of excess channel capacity that can be brokered.

(3) Regulatory Obligations

As discussed above, if the Commission follows its present model for time brokerage, radio station licensees will be ultimately responsible for insuring the compliance by brokers with Commission regulations. Should, however, the Commission exert regulatory control over the brokerage of subsidiary digital channels through the transfer of control process, then primary compliance responsibility should shift. Under such circumstances, that responsibility, and potential liability, should fall on the shoulders of the person or entity that can most directly insure compliance – the subsidiary programmer.

(4) Sponsorship Identification Rules

The Sponsorship Identification Rule, 47 C.F.R. § 73.1212, should apply to multicast channels in multicasting marketplace. For brokered multicast channels, the responsibility for compliance will depend on whether the Commission treats multicasting as it has treated brokered programming, with the licensee remaining ultimately responsible for the broker's failure to

comply with sponsorship identification requirements, or treats it as a form of transfer of control, in which case the Commission can and should enforce its requirements directly against the broker.

(5) *Broadcast Ownership*

In order to spur the growth of IBOC radio, the Commission should permit existing licensees to acquire other licensee's excess spectrum. It is still premature to determine whether digital multicasting will require further relaxation of the local radio ownership rule. In fact, the Commission should defer inquiry into multiple ownership pending a result in the *Prometheus*⁹ litigation. At present, it is uncertain whether geographic Arbitron markets or signal contours will be used to ascertain the relevant market. Until this issue is decided, the Commission should refrain from acting on the matter.

The Commission should also avoid limiting the number or percentage of program capacity that may be brokered by one or more individuals or entities. The key issue is who controls the primary program service of the station. We anticipate that this will remain the station licensee, and it should have the greatest flexibility possible given the unknown market in DAB.

c. Datacasting (§ 23)

Sections 73.127, 73.295 and 73.593 of the Commission's Rules (47 C.F.R. §§ 73.127, 73.295 and 73.593) provide for the issuance of subsidiary communications authorizations ("SCAs") to FM and AM stations. As the Commission has stated in its order, some of these subsidiary communications services supplement the main broadcast program and others are entirely non-related. In order to promote potential revenue growth and spur the development of

⁹ *Prometheus Radio Project v. FCC*, No. 03-3388 (3d Cir., filed Aug. 13, 2003).

IBOC broadcasting, the Commission should adopt a “flexible policy permitting radio stations to produce and distribute any and all types of datacasting services.”¹⁰ Such a flexible approach is necessary to preserve free-over-the-air broadcast radio in an ever-fragmenting radio market. The Commission should allow supply and demand to determine what datacasting services are deployed in a market.

d. Subscription Services (§ 29)

The Commission should permit the use of subscription services for a fee on a licensee’s excess capacity, provided that the licensee provides at least one free digital audio stream. While the Commission should authorize subscription-based services, it should not impose a fee, similar to datacasting performed on digital television stations under § 336 of the Act. Unlike digital television broadcasters, DAB broadcasters did not receive additional spectrum during the transition period.

2. Programming and Operational Rules

The Associations understand that some public interest obligations will rightly attach to the new DAB technology. Broadcasters continually strive to serve the public interest. Primary audio channels broadcast by radio stations using IBOC technology will be essentially identical to today’s radio stations. As such, the public interest obligations of primary channel broadcasters should not be increased but remain the same as at present. However, secondary audio channels broadcast using multicast technology should have some, but not all, of the public interest obligations. The Commission’s specific public interest concerns are addressed below.

¹⁰ Digital Audio FNPRM at ¶ 27.

a. Community Needs (§ 33)

Stations are already obligated to determine the needs of their communities and provide programming to meet those needs. Since deregulation of the early 1980's, each station has continued to ascertain its community needs and the results can be found in every station's Local Public Inspection File in the station's quarterly Issues/Programs List. As a result, a separate Commission ascertainment process is unnecessary and would be redundant.

b. Local Programming (§ 34)

The multi-casting capability of terrestrial digital radio will create a wealth of additional opportunities for local programming to serve diverse interests and narrow audiences in every community because each station will have additional airtime that it must find programming to fill. Hence, the Commission should refrain from mandated localism requirements. Moreover, mandatory localism requirements may not suit the individual tastes present in each DAB market; listeners in small markets may want multicast channels to focus on national services and personalities not locally available. In many markets, of all sizes, there is likely to be a demand for a national or international audio news service running 24 hours per day, 7 days per week, just as there has proven to be sufficient demand to support several such cable news services. Similarly, it would be contrary to the public interest, and raise grave First Amendment implications, were the Commission to impose localism requirements that might stifle the distribution of a national public affairs audio channel, such as C-SPAN offers to cable operators, and broadcasts over radio in the Washington, D.C., market.

In order to facilitate localism without endangering the economic viability of a broadcast station, the Commission should not set localism minimum requirements or thresholds. The

market will best determine the amount of local broadcasting available in an area, and the Commission's role should be minimal with regard to programming decisions.

c. Political Broadcasting (§ 36)

As applied to multicasting, the Commission should forbear in applying the requirements of 312(a)(7) of the Act to the newly created multicast channels. In particular, the Commission should not apply the right of reasonable access for federal candidates to secondary digital channels. It is anticipated that many such channels will be used for purposes, such as programming targeted at children that are incompatible with electioneering communications. It seems incomprehensible that the public interest requires candidate access to a multicast service that consists solely of children's educational programming.

If a licensee or broker chooses to grant non-exempt access to legally qualified candidates, whether through acceptance of advertising or non-exempt program appearances, then the equal opportunities and lowest unit charge provisions of Section 315 should apply.

Such an action forbearing some Title III obligations as applied to nascent industries would not be unprecedented. From 1982 through 1992, the Commission sought to shield satellite broadcasters from Title III regulations when the satellite industry was still developing.¹¹ In this instance, where DAB is still a nascent technology the Commission should shield it from unnecessary regulation that may hinder its development.

Given the opportunity to develop unfettered by unnecessary and often counter-productive government regulation, DAB has the potential to enhance political discourse and coverage of political and other public affairs topics, without imposing mandatory political access requirements. During election periods, there may be sufficient public demand to encourage

¹¹ See *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (U.S. App. D.C. 1984); see also *In Subscription Video*, 2 F.C.C.Rcd. 1001 (1987).

broadcast stations to develop a multicast channels devoted entirely to political candidate broadcast. Or, as mentioned above, there may be sufficient demand to justify a channel focused on coverage of local, state and national political and public affairs issues. Similar market-driven political discourse channels have been developed on formerly nascent technologies, such as the development of 24-7 cable news channels like Cable News Network and MS-NBC or of the public affairs C-SPAN network.

d. Emergency Alert Systems (§ 37)

It is in the public interest to extend 47 C.F.R. § 73.1250 to all audio streams broadcast by a radio station. The purpose of the system – broad public awareness of emergencies in sufficient time to take action – can only be fulfilled if the rule is broadly applied.

e. Station Identification (§ 39)

Multicast audio channels should not be subject to station identification requirements. Such requirements are unnecessary for listener recognition and Commission enforcement efforts. Without additional regulatory action, a station will routinely identify its channel position to listeners to develop market recognition. Stations now identify themselves, their call sign, identifier slogan, community of license and dial position (e.g., “Z105.3”) far more often than the Commission’s rules require. Further station identification requirements, which reduce broadcast flexibility, are not needed to ensure listener recognition of particular broadcast channels. Additionally, with new digital technologies, the call letters of the licensee can be embedded into the bit-stream of a channel. Thus, the Commission will have a means to easily identify a station and monitor its compliance with broadcast rules. In fact, DAB technology permits a visual identification on all receivers (through an identification included in the transmitted bitstream) eliminating the need for an hourly aural identification.

f. Other programming and operational rules (¶ 40)

The Associations agree with the Commission that changes will not be needed to the AM/FM territorial exclusivity,¹² broadcast of taped/recorded material,¹³ minimum hours of operation,¹⁴ sponsorship identification,¹⁵ payment disclosure,¹⁶ cigarette advertising,¹⁷ prohibited contest practices¹⁸ rules as applied to transitioning existing analog broadcasters to digital services.

However, as applied to a multicasting context, changes may be needed to the minimum hours of operation rule in order to foster the growth of subsidiary digital channels. The Commission may want to support multicasted channels, which do not operate two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight in order to promote more digital multicastrs on the air.

3. Technical Rules

a. The Associations Support AM Nighttime Operations

The Commission should adopt the National Association of Broadcasters' recommendation that the FCC extend current interim authorizations of IBOC service to

¹² 47 C.F.R. §§ 73.132, 73.232.

¹³ 47 C.F.R. § 73.1208.

¹⁴ 47 C.F.R. § 73.1740.

¹⁵ 47 C.F.R. § 73.1212.

¹⁶ 47 C.F.R. § 73.4180.

¹⁷ 47 C.F.R. § 73.4055.

¹⁸ 47 C.F.R. § 73.14.

nighttime AM broadcasts.¹⁹ The Commission has understandable concern regarding AM clear channel stations and sky wave interference with adjacent channels. However, recent studies compiled by iBiquity have shown that “the AM HD Radio systems will not have a significant impact on most AM stations’ existing analog users.”²⁰

NAB and iBiquity admit that some interference may occur with the new authorization.²¹ However, both groups maintain that “the benefits to be gained for AM broadcasters and AM listeners will prove to far outweigh the limited additional interference predicted” by iBiquity.²² The benefit to IBOC broadcasts is great; IBOC broadcasts have the potential to invigorate AM broadcasting by creating reception comparable to its FM counterpart. While the interference risks are slight, iBiquity found that their field tests indicate that most ground wave interference will occur at the edge of analog coverage and the interference is “not expected to impact a station’s core listenership.”²³

The Associations recommend that the Commission adopt the NAB-comment and iBiquity-study recommendations: extend authorization to IBOC AM nighttime broadcasts, extend such authorization for all AM channels permitted to broadcast at night, extend authorization on a ‘blanket basis’ and address instances of interference on a case-by-case basis.

¹⁹ See Letter to Marlene H. Dortch, Secretary, FCC, from Jack N. Goodman, Senior Vice President and General Counsel, National Association of Broadcasters (Mar. 5, 2004).

²⁰ See Field Report: AM IBOC Nighttime Compatibility, iBiquity Digital Corporation, October 31, 2003 at 1; See also Field Report: AM IBOC Nighttime Performance, iBiquity Digital Corporation, Oct. 20, 2003; See also AM Nighttime Compatibility Study Report, iBiquity Digital Corporation, May 23, 2003.

²¹ See Dortch Letter at 1; See also iBiquity Oct. 31, 2003 Field Report at 1.

²² Dortch Letter at 1.

²³ *Id.* at 3.

b. Separate Antennas Speed the Deployment of IBOC Technologies

(1) *The Associations support separate antenna authorization*

Prior to the Commission's authorization for a dual antenna system, stations were forced to combine both the digital and analog signals into one antenna. The one antenna system resulted in both lower signal transmission efficiency and overall increased broadcast cost. As mentioned in a 2003 NAB report to the Commission,²⁴ "[t]he transmitter required in the separate antenna configuration is one tenth the power of the transmitter needed for the high level combined method. . . . The broadcaster can avoid the cost associated with a high power digital transmitter and the inefficiencies of a 90% loss from the high level combining methodology by the use of a separate antenna for digital transmission."²⁵ Considering the dramatic efficiency savings, the Associations support the Commission's recent decision permitting Media Bureau authorization of dual antenna FM IBOC transmissions.²⁶

(2) *The Associations support streamlined antenna notification procedures as proposed by NAB*

Authorization of separate antenna transmissions for IBOC FM would greatly facilitate the transition to digital radio broadcasting. However, the authorization procedure is so burdensome and cumbersome that it reduces the incentive to take advantage of the dual antenna technology. The procedure requires a separate filing in addition to the Commission's IBOC

²⁴ Letter to Marlene H. Dortch, Secretary, FCC, from Henry L. Bauman, National Association of Broadcasters (July 24, 2003). ("NAB Dual Antenna Report")

²⁵ *NAB Dual Antenna Report* at 2.

²⁶ FCC Public Notice, Use of Separate Antennas to Initiate Digital FM Transmissions Approved (rel. March 17, 2004).

Notification Procedures.²⁷ In January of 2004, the NAB recommended measures to ‘simply’ and ‘streamline’ the Commission approach to the authorization of separate antennas under 47 C.F.R. § 73.1635.²⁸ NAB proposed that instead of requiring special temporary authorization procedures, which require a separate filing for approval, additional items could be added to the Commission’s IBOC Notification Procedures at the outset of the application procedure. NAB suggested that in the Notification Procedures, prospective IBOC broadcasters could indicate their antenna configuration, and if separate antennas were to be used, to include confirmation that the antenna meets the Commission’s parameters. The Associations support an approach which requires only one filing with the Commission and the administrative burden on the broadcaster is reduced. As a result, it is hoped that more broadcasters take advantage of the more efficient dual antenna configuration.

4. The RIAA’s Concerns Regarding Digital Audio Content Control Have Little Merit

The Associations appreciate the opportunity to respond to the Notice of Inquiry also proposed by the Commission. However, even though the Recording Industry of America (“RIAA”) has indicated that IBOC technologies “threaten[] to be the next wide-scale piracy to ravage the recording industry,” the Associations believe that these fears are unfounded.²⁹ Moreover, they are more properly the concern of the Courts and the Copyright Office, not the Commission. Instead of opposing the development of a digital audio broadcasting standard, the

²⁷ Public Notice, IBOC Notification Procedures Effective Immediately, DA 03-831, March 20, 2003.

²⁸ Comments of the National Association of Broadcasters Jan. 8, 2004 (insert proper cite)

²⁹ See Letter to Mary Beth Murphy, Chief, Policy Division, FCC, from Theodore D. Frank, Counsel, Recording Industry Association of America (October 2, 2003).

RIAA should work with iBiquity to develop a digital watermark technology that would protect the copyright interests of artists.

IV. CONCLUSION

For the foregoing reasons, the named State Broadcasting Associations encourage the Commission to accept its recommendations and continue to deploy market-paced digital audio broadcasting technologies on the basis set forth in these Comments.

Respectfully submitted,

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New Hampshire Association of Broadcasters,
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North Dakota Broadcasters Association,
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South Carolina Broadcasters Association,
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Washington State Association of Broadcasters,
Wisconsin Broadcasters Association,

Arizona Broadcasters Association,
California Broadcasters Association,
Connecticut Broadcasters Association,
Georgia Association of Broadcasters,
Indiana Broadcasters Association,
Kansas Association of Broadcasters,
Louisiana Association of Broadcasters,
MD/DC/DE Broadcasters Association,
Michigan Association of Broadcasters,
Mississippi Association of Broadcasters,
Montana Broadcasters Association,
Nevada Broadcasters Association,
New Jersey Broadcasters Association,
The New York State Broadcasters Association, Inc.,
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